IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 24110 of 2007(T)

PETITIONER:

M/S ESCAPADE RESORTS PVT. LTD.,
UNIT: KALARI KOVILAKAM, KOVILAKAM MUKKU,
KOLLENGODE, PALAKKAD-678506, REPRESENTED BY ITS
DIRECTOR, MR. MICHAEL DOMINIC.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER(IB),
COMMERCIAL TAXES, PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, TAXES, TRIVANDRUM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF REGISTRATION CERTIFICATE DATED 30/05/2007 ISSUED BY KOLLANGODE PANCHAYAT.

P2 (a) : COPY OF CERTIFICATE OF DOCTORS.

P2(b) : COPY OF CERTIFICATE OF THERAPISTS.

P3 : COPY OF SAMPLE SET OF PROCEDURE FOR ADMISSION IN KALARIKOVILAKAM.

P4 : COPY OF RULES & REGULATIONS OF KALARIKOVILAKAM.

P5 : COPY OF REGISTRATION AT KALARIKOVILAKAM.

P6 : COPY OF QUESTIONNAIRE, DAILY STATEMENTS ETC. GIVEN ON DISCHARGE.

P7 : COPY OF AFFIDAVIT OF ONE OF THE DOCTORS IN KALARIKOVILAKAM.

P8 : COPY OF NOTICE DATED 15/06/2007 ISSUED BY THE 1ST RESPONDENT.

P9 : COPY OF REPLY DATED 28/06/2007 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT TOGETHER WITH ANNEXURES.

P10(a) : COPY OF ORDER DATED 12/07/2007 OF THE 1ST RESPONDENT FOR THE YEAR 2004-05.

P10(b) : COPY OF ORDER DATED 12/07/2007 OF THE 1ST RESPONDENT FOR THE YEAR 2005-06.

P10(c) : COPY OF ORDER DATED 12/07/2007 OF THE 1ST RESPONDENT FOR THE YEAR 2006-07.

P10(d) : COPY OF ORDER DATED 12/07/2007 OF THE 1ST RESPONDENT FOR THE YEAR 2007-08.

P11 : COPY OF THE CERTIFICATE DATED 30/05/2007 ISSUED BY THE KOLLENGODE GRAMA PANCHAYAT.

P12 : COPY OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF PETITIONER.

P13 COLLECTIVELY : COPY OF STATEMENT WITH COPIES OF REGISTRATION CARDS AS WELL AS INVOICES.

P14 : COPY OF TOURISM APPROVAL DATED 27/08/2003.

RESPONDENT'S EXHIBITS

R1(a) : COPY OF SRO 1077/95.

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R1(b) : COPY OF COMPOUNDING APPLICATION FILED BY THE PETITIONER.

R1(c) : COPY OF THE EXTRACT TAKEN FROM THE WEBSITE OF THE PETITIONER.

R1(d) TO (g) : COPY OF THE AUTHENTICAL COPIES OF THE EXTRACTS OBTAINED FROM PETITIONERS UNIT SHOWING THAT FROM 18/12/2004 TO 31/05/2007 THEY RECEIVED ROOM RENT.

R1(h) : COPY OF THE AUTHENTICAL COPIES OF EXTRACTS TAKEN FROM THE WEBSITE OF THE PETITIONER AS EXPENSES FOR 14 DAYS STAY.

R1(i) : COPY OF THE AUTHENTICAL COPIES OF THE EXTRACTS OBTAINED FROM PETITIONERS GUEST REGISTRATION FILE.

R1(j) : COPY OF THE AUTHENTICAL COPIES OF THE GUEST REGISTRATION CARDS (28 NOS.)

R1(k) : COPY OF THE CERTIFICATE BEARING NO.C/109/04 DATED 17/09/2004.

R1(l) : COPY OF LETTER ISSUED BY THE PETITIONER DATED 18/09/2004.

R1(m) : COPY OF THE STATEMENT FILED BY THE PETITIONER DATED 16/11/2006.

R1(n) & (o) : COPY OF BROACHER PUBLISHED BY THE KTDC.

R1(p) : COPY OF CERTIFICATES ISSUED BY KOLLENGODE GRAMA PANCHAYAT (5 NOS.)

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 24110 of 2007

Dated, this the 13th day of September, 2007

J U D G M E N T

This writ petition is filed challenging Ext.P10 series of penalty orders issued under Section 17A of the Kerala Tax on Luxuries Act levying penalty on petitioner for the assessment years 2004-05 to 2007-08. While the case of petitioner is that they are running only an Ayurvedic Hospital, the case of 1st respondent reflected in the above orders is that petitioner is running hotel that attracts luxury tax. Section 7 and 7A of the Act provide two level appeals against the impugned penalty orders. Decision on merit necessarily involves consideration of detailed facts, documents and accounts. I do not think, this Court should consider the matter on merits because the appellate authority under the statute is the more appropriate authority to consider the facts on merits and to reach a conclusion in the matter. In the circumstances, it is open to the petitioner to challenge the impugned orders in appeals before the statutory authority. Since this writ petition was admitted and stay was granted by this Court for over a month, petitioner is granted three weeks time from today to file appeals and stay petitions.

The stay granted by this Court also will continue for six weeks from now. In between petitioner will file appeals and move stay applications before the appellate authority as above. The appellate authority is directed to pass orders on stay applications within three weeks from the date of filing of appeals accompanied by stay petitions.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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